

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

June 8, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 94-1679

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**STATE OF WISCONSIN
EX REL. DONALD LEE,**

Petitioner-Appellant,

v.

JEFFREY ENDICOTT,

Respondent-Respondent.

APPEAL from an order of the circuit court for Columbia County:
DANIEL GEORGE, Judge. *Affirmed.*

Before Gartzke, P.J., Dykman and Sundby, JJ.

PER CURIAM. Appellant Donald Lee is an inmate domiciled at Green Bay Correctional Institution. He was charged in a conduct report issued November 1, 1993, with violating WIS. ADM. CODE §§ DOC 303.20 (group resistance and petitions) and 303.30 (unauthorized forms of communication). After a hearing, the adjustment committee found him guilty and imposed four days adjustment segregation and sixty days program segregation. The

determination was affirmed by the superintendent November 18, 1993. We affirm.

On October 4, 1993, a letter was received at Columbia Correctional Institution, where Lee was then incarcerated, from Denelle Carter to Lee. The mail room officer opened the letter and inspected it for contraband. The officer concluded that a salutation contained in the letter was gang-related. The officer forwarded the letter to Lt. K. Radtke for review. Radtke concluded that the letter was not written by Carter but by inmate Touissant Harley. The closing was written in common "pig latin" frequently used by inmates to disguise the identity of the writer. Radtke compared the handwriting of the writer with Harley's handwriting and concluded that the handwriting matched. The officer who wrote the conduct report, Peter Huibregtse, concluded that inmate Harley was attempting to communicate with Lee by an unauthorized letter. He concluded, after reading the letter, that Harley was responding to a letter sent to him by Lee, which was also routed through a third party. Harley (or the writer of the letter) stated in the letter:

The things you spoke of in your letter are in progress, but will be done very slowly due to the ones who enjoy talking! I have an idea of who did what concerning your case, but things must cool down in the streets first before any legal actions are taken!

Harley also stated in the letter that he was routing it through an outside party to avoid the "overseeing eye." He also stated:

You MUST be very CAREFUL as to what you say around others!
Just lay back and watch how these people operate and you will know what can and can't be done. There is no need for the numbers because they know how to break that down so that its understood!

Harley continued to instruct Lee in such a way that Huibregtse concluded that Harley and Lee were planning some kind of serious disturbance involving other inmates. The officers therefore began to monitor these inmates' letters. On October 10, 1993, Lee responded to Harley's letter, routed through

Carter and including the same "legal" jargon. Huibregtse also stated in the conduct report that:

It is important to remember that these types of inmates who represent[] themselves as Gangster Disciples but were not living it were said to be targets of the gangs in the Recreation Field incident of 09/08/93.

On September 8, 1993, an attempt was made in the recreational yard to injure or kill Jeffrey Endicott.

Lee further stated to Harley that:

You are a very wise young Brother, and I respect all of that. However concerning this case that is pending, I have become very good with the law and it can be beat, I am with a very low key approach, but I want to see results.

After further instructions to Harley couched in the same ambiguous jargon, Lee concluded: "Let's make things happen. Stomp down."

Huibregtse concluded that a comparison of the letters reasonably led to the conclusion that these inmates were planning to incite a riot, contrary to WIS. ADM. CODE § DOC 308.18A. Huibregtse also concluded that the letter contained obvious gang references, contrary to WIS. ADM. CODE § DOC 303.20(3). The conduct report was reviewed and approved by an associate security director October 29, 1993, and classified as "major."

Lee was represented at the disciplinary hearing by a staff advocate. He called Harley and Officer Ayers as witnesses. He did not request the attendance of Huibregtse. The adjustment committee found Lee guilty based upon the conduct report, the letters, and the testimony at the hearing.

Lee claims that defendants did not follow the applicable rules and directives of the institution; used conspiracy and entrapment tactics to invent a charge against Lee; failed to identify Lee as a gang member or a participant in any gang activity; and found him guilty of unauthorized forms of communication without evidence.

We review the record on certiorari *de novo*. We are limited to determining: (1) whether the agency kept within its jurisdiction; (2) whether it acted according to law; (3) whether it acted arbitrarily, oppressively or unreasonably; and (4) whether the evidence presented was such that it might reasonably have made the determination it made. *Van Ermen v. DHSS*, 84 Wis.2d 57, 63, 267 N.W.2d 17, 20 (1978). Lee accepts our standard of review. He argues that the committee's decision was arbitrary, capricious and unlawful. We disagree.

Any reasonably well-informed person, reading the exchange of correspondence between Harley and Lee, would recognize that they used a language of their own to communicate with each other. Further, the attempt on Endicott's life on September 8, 1993, justified the prison officials' caution. Lee argues that since that attempt, suspected Gangster Disciples have been persecuted.

Lee also alleges that he was placed in temporary lock-up earlier as part of a policy of racial discrimination directed at him and other African-American inmates at Columbia Correctional Institution. In an affidavit, Lee acknowledged that he had initiated communication with Harley through a third-party non-inmate. He claimed that the sole purpose of the communication was to plan a lawsuit in Federal Court. He argued that they were planning to bring legal action against certain prison officials and that the use of a non-inmate to communicate was necessary to keep this information confidential.

The committee relied on the conduct report. In light of its comprehensiveness and the corroborating testimony before the committee, resorting to the conduct report was permissible. See *Culbert v. Young*, 834 F.2d 624, 631 (7th Cir. 1987), *cert. denied*, 485 U.S. 990 (1988).

Lee accuses the officials of entrapment because, after examining the contents of the letter from Harley to Lee, they resealed the letter and caused it to be delivered. Lee does not understand the defense of entrapment. That defense requires a showing that the officials created a situation specifically to induce the targeted person to commit a crime which he or she would not otherwise have committed. See *State v. Bjerkaas*, 163 Wis.2d 949, 954-55, 472 N.W.2d 615, 617 (Ct. App. 1991). Here, the most that can be said as to the prison officials' treatment of the exchange of correspondence is that they allowed the exchange to be completed. This was understandable since they could not know at the time they inspected Harley's letter to Lee what was coming down. Lee's intent was not clear until he responded to Harley's communication.

We conclude that the committee had ample evidence to support its conclusion that Lee was guilty of the charges against him. We therefore affirm the order quashing Lee's writ of certiorari and dismissing his appeal.

By the Court.--Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.